

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRIAN COFFEY)	CASE NO. 1:18cv02675
)	
<i>Plaintiff,</i>)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	<u>DEFENDANTS KENNETH L.</u>
BUCKEYE SHAKER SQUARE)	<u>JOHNSON AND GARNELL</u>
DEVELOPMENT CORPORATION, et)	<u>JAMISON'S RESPONSE IN</u>
al.)	<u>OPPOSITION TO PLAINTIFF'S</u>
)	<u>MOTION FOR DEFAULT JUDGMENT</u>
<i>Defendants.</i>)	

NOW COME Defendants Kenneth L. Johnson and Garnell Jamison, by and through their legal counsel, Forbes, Fields & Associates Co., L.P.A., and hereby submit their Response in Opposition to Plaintiff's Motion for Default Judgment and request that this Honorable Court denies Plaintiff's Motion.

This Response is being filed contemporaneously with Defendants Kenneth L. Johnson and Garnell Jamison's Motion for Leave to File Answer, Instantly. Rule 55(a) of the Federal Rules of Civil Procedure states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." If this Court grants Defendants Johnson and Jamison's Motion for Leave to file Answer, Instantly, their Answer will be entered, they will not have failed to plead, and the clerk of court would not have the authority to enter a default judgment against Defendants Johnson and Jamison. Thus, this Court should deny Plaintiff's Motion for Default Judgment because Defendants Johnson and Jamison's Motion for Leave to File Answer, Instantly is pending.

This Court should also deny Plaintiff's Motion for Default Judgment on the grounds that any such entry of default should be set aside under Rule 55(c) of the Federal Rules of Civil Procedure. Rule 55(c) provides that "[t]he court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)." The Sixth Circuit Court of Appeals has stated that "[i]n general, our cases discussing motions to set aside default under Rule 55(c) are extremely forgiving to the defaulted party and favor a policy of resolving cases on the merits instead of on the basis of procedural missteps." *U.S. v. \$22,050.00 U.S. Currency*, 595 F.3d 318, 322 (6th Cir., 2010).

Based on said public policy that cases should be decided on their merits, rather than on procedural missteps, this case should be given the chance to be heard on its merits. Defendants were not able to file their Answer on time because they did not receive service of Plaintiff's Complaint, and were unaware of this action against them until it was already too late to file their Answer. It would be unjust to allow this action to be decided on a procedural technicality, rather than on the merits. Thus, this Court should deny Plaintiff's Motion for Default Judgment and allow this case to be heard on its merits.

WHEREFORE, for all the foregoing reasons, Defendants Kenneth L. Johnson and Garnell Jamison, pray that Plaintiff's Motion for Default Judgment be denied.

Respectfully submitted,

FORBES, FIELDS & ASSOCIATES CO., L.P.A.

/s/ George L. Forbes

/s/ Scott H. Schooler

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CERTIFICATE OF SERVICE

A copy of the foregoing Defendants Kenneth L. Johnson and Garnell Jamison's Response in Opposition to Plaintiff's Motion for Default Judgment was served via the Court's electronic case filing system on this 3rd day of July, 2019, to the following:

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